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LEGAL SANCTION THE ROLE OF LAWYERS IN THE DUFFY SCANDAL



► Photo credit: cbc.ca

ESTHER MENDELSON ▸ STAFF WRITER

A RECENT ANALYSIS of Twitter data found that Stephen Harper's name was mentioned more times in connection with the Mike Duffy trial than the economy. This does not bode well for Mr. Harper, considering his campaign message has been centred on the Conservative Party's economic record. It is clear that the trial of former Senator Mike Duffy has eclipsed the PC campaign message.

The Duffy affair certainly raises some interesting questions, and each new revelation seems to be more troubling than the one preceding it. No one's hands seem to be completely clean and there seem to be serious ethical infractions on all sides—allegedly. Particularly disturbing is the role lawyers have played in this story, and the legal community should be especially concerned.

Regardless of where you fall on the political

spectrum, the possibility that lawyers facilitated a fraud, a bribe, a breach of trust, or a cover-up—however you care to label it—should be a cause for alarm.

Even if what was done was not, strictly speaking, illegal, it was at the very least ethically problematic. Everyone involved in this story is intelligent, highly educated, experienced, and accustomed to moving in the most elite circles of political power; ignorant and naïve they are certainly not. Nor can they be absolved because they consulted lawyers. The involvement of lawyers, however, is very troubling, indeed.

Often, those in power and with the means to shop around for lawyers will actively seek out lawyers who will tell them what they want to hear and sanction otherwise indefensible positions. They may

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Life is short.

Have an affair, compromise your privacy, and face misconduct charges.

TO THE INCOMING class of 2018, let the *Obiter Dicta* be one of many to welcome you to Osgoode! Today you take the first step on a journey of a thousand miles. Your introduction to the practice of law begins with what is referred to simultaneously as the most and least relevant class of the JD program: Ethical Lawyering in the Global Community. Before reveling in the wit of Lord Denning, you must first become acquainted with all seven chapters of the LSUC's Rules of Professional Conduct. In addition, your conceptions of morality and ethics will be challenged through episodes of *The Practice* and lively mock trials. You may be confronted with dilemmas that involve sweatshops in Indonesia, disposing of key evidence, and looming brain aneurisms. To help prepare you for what awaits, I ask the following question: To what extent should a lawyer's private morals inform their professional ethics?

This question has become especially relevant in the legal community with the recent Ashley Madison data leaks. For those unaware, Ashley Madison is an online dating service for married individuals looking to have an affair. The hacker group Impact Team released over 9.7 gigabytes of account details for nearly 32 million users of the site on August 18. Several of these user profiles have been linked to Bay Street firms, sparking debate over whether adultery should be subject to discipline under the LSUC's Rules on professional integrity. The supporting argument is premised on the idea that these acts negatively impact the lawyer's credibility. It is suggested that a lawyer who actively pursues an opportunity to break their wedding vows can be equated to someone without fidelity to their word, and therefore untrustworthy as both a spouse and a lawyer.

The issue forces an examination of the nexus between a lawyer's private life and its impact on their professional obligations. Author Daniel R. Coquillette writes that the law is "not merely a trade but rather a profession, which entails a higher calling in pursuit of the public interest." He suggests that it is a delusion of young, inexperienced lawyers to think they can separate their personal lives from their professional ones, or that they can separate their personal and professional ethics. The philosophical underpinnings of this line can be found in Plato's *Republic*, where it is argued that



► Our society is coming to terms with the fact that people's personal lifestyle choices should not impact their professional lives. Millions of people have affairs –politicians and lawyers are no exception. Photo credit: Thewire.com

the members of the guardian class have no private life apart from their political duties. It could be said that by virtue of taking on the responsibility of certain occupations such as a politician and lawyer, the private individual makes himself publicly available. This may be seen as implicit consent to be publicly scrutinized for both public and private action.

Many hold the belief that lawyers should be held to a higher standard in order to justify their privileged position in society. The Federation of Law Societies of Canada has addressed the question of whether lawyers are bound by their code of professional conduct in all respects and at all times. It was the Federation's position that lawyers are bound at all times by their code of professional conduct when their conduct relates to the protection of the public, respect for the rule of law, or the administration of justice. The Federation also confirmed that a special ethical and social responsibility comes with membership in the legal profession, and the unique and privileged position that a lawyer holds in society requires the lawyer to refrain from acts that are derogatory to the dignity of the profession.

The commentary for the LSUC's Rules on integrity speaks to how a lawyer's dishonourable or

questionable conduct in either their private life or professional practice can reflect adversely on the integrity of the profession and the administration of justice. However, it also notes that the Law Society will not concern itself with the purely private or extra-professional activities of a lawyer that do not bring the lawyer's professional integrity into question. This does little to clarify whether adultery can be viewed as a purely private activity that does not bring professional integrity into question. For additional guidance, the CBA Code of Professional Conduct provides illustrations of conduct that may be viewed as dishonourable or questionable. The most relevant example cited is committing any personally disgraceful or morally reprehensible offence that reflects upon the lawyer's integrity (of which a conviction by a competent court would be *prima facie* evidence). This language seems to suggest that the offensive behaviour ought to be illegal to attract the attention of the Law Society. Though distasteful and grounds for divorce, adultery is not necessarily a criminal offence.

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Obiter Dicta

A. Osgoode Hall Law School, 0014G
York University
4700 Keele Street
Toronto, ON M3J 1P3
E. ObiterDicta@osgoode.yorku.ca
W. obiter-dicta.ca
T. @obiterdicta

"You cannot live without the lawyers, and certainly you cannot die without them."
JOSEPH H. CHOATE

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Evan Ivkovic, Shannon Corregan, Anthony Choi, Michael Motala

LAYOUT STAFF

Rachel McPherson, Karen Wang

CONTRIBUTORS

Jermain Virgo, Kareem Webster

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An Unexpected Experience

Summer Caseworkers at Parkdale Community Legal Services successfully unionize.

JASON HUANG › STAFF WRITER

BEING A SUMMER caseworker at Parkdale Community Legal Services (“PCLS”) has historically brought with it experiences and opportunities that are interesting, exciting, and challenging. Students are expected to carry at least twenty active files and taught necessary lawyering skills, while also dedicating time to community legal work and campaigns for systemic change. This summer, my experience at PCLS was not like what I expected. I expected intensive training in the area of Worker’s Rights. I expected to carry files in employment law, wrongful dismissal, and human rights. I expected to advocate for the rights of workers—whether they be my clients’ or worker’s rights in general. I did not expect to be a part of a movement to advocate for the rights of the PCLS summer caseworkers.

On 5 August 2015, the summer caseworkers at PCLS unionized. We selected the Ontario Public Service Employees Union (“OPSEU”) as our sole bargaining agent, which made sense because the staff members at the clinic are also represented by OPSEU. It is this unexpected experience that provided an unparalleled summer for me.

Fairly early into the summer term, a group of caseworkers met with an OPSEU organizer to discuss the possibility, risks, and benefits of unionizing. After several of these meetings, the group began getting cards signed for the certification drive.

In early June, twelve of us met at a local restaurant to discuss people’s perspectives on the drive. Issues were raised, worries were expressed, and dissenting opinions were made clear but, ultimately, the entire table agreed to move forward with filing an application. It was not until 6 July that we actually filed with sixteen out of twenty cards signed—double the legal requirement of 40 per cent.

During the month and in-between, a lot of work had to be done. Some were tasked with collecting remaining cards that were unsigned. I, along with various others, were involved with meeting with our organizer to fill out the application, determine when and where the vote would be held, and strategizing about when was the best day to file the application. Furthermore, we had anticipated very early on that management would challenge our status as employees so we discussed the circumstances surrounding our employment to formulate arguments countering this position.

As it happens, after we filed the application management filed a legal response on 8 July positing that we are not employees and do not have a sufficient connection to the workplace to form a bargaining unit. Although the response was expected, many were upset by its tone and implications. That same day, the clinic’s existing staff union produced a poster that outlined rebuttals to the position. It stated that PCLS summer caseworkers dedicate hundreds of hours, service all the clients in the community, and so on. It ended with “Summer caseworkers and staff work together. One union for PCLS”. These posters were placed all over the clinic. In the Workers’ Rights Division, since we are located at the end of the hall, we decided to hang the OPSEU flag

on the wall so that anyone walking down the hall can clearly see it. Morale was strong at the clinic, and perhaps strengthened by management’s legal position.

On vote day, 13 July, sixteen of us voted. Because of management’s challenge, the ballot box was sealed and held at the Ontario Labour Relations Board (“OLRB”) once all the ballots were cast. A hearing to determine whether we were employees of PCLS was scheduled for 17 and 18 August. Rick Blair from Ryder Wright Blair and Holmes LLP was retained by OPSEU to represent us at the hearing. In preparation, we provided OPSEU our employment contracts, paystubs, tax forms and other relevant documents. Fortunately, we did not require the hearing after all.

Perhaps the most important piece for averting the hearing was the open letter that one of the caseworkers, Parmbir Gill, wrote (attached to this article). The letter was disseminated widely beginning 23 July. By the afternoon of 27 July, we collected 237 signatories, including sixteen current PCLS caseworkers,

70 PCLS staff and alumni, and 151 community supporters. We emailed the letter with all its signatories attached to each member of the Board of Directors. It was a complete shock when we learned on the morn-

ing of 29 July that the Board had met and voted to withdraw its legal response. As a result, the OLRB unsealed the

ballot box and counted the votes on 5 August. With a decisive 14-2 vote for the unionizing, we were officially certified!

From the perspective of a student who is interested in a legal career in union-side labour law, the first-hand experience gained from successfully organizing, complete with all the fears and joys, made the summer for me. The PCLS summer caseworkers banded together towards this goal. We formed the first bargaining unit of its kind in the legal aid sector. Our journey is a testament that grassroots mobilizing can yield surprising results. Let this be a

“Although the response was expected, many were upset by its tone and implications.”

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► Photo credit: opseu.org

THUMBS UP



The Blue Jays playoff run.

Pay It Forward

Bringing business flair to the legal community

SAM MICHAELS > EDITOR-IN-CHIEF

LAST SEPTEMBER, I was fortunate to be offered the opportunity to speak at the 2nd annual Pay It Forward legal networking event. At the time, I was working on my first business, the Legal Information Network of Canada, and just starting to solidify my career path. I was contacted by event founders Rena Sangha and Pawan Sahi and asked to talk about my experience growing a legal start-up and my plans for the future.

Walking into the event, I wasn't sure what to expect. I had little in the way of networking acumen and virtually no experience with fancy get-togethers in beautiful spaces. To my pleasant surprise, Pay It Forward proved an exciting blend of professionalism and sociability, bringing together interesting and progressive legal and business minds.

Rena and Pawan developed Pay It Forward in 2013 to address a void in the legal networking world. They saw that many legal networking events were geared only to finding the next crop of junior associates or for established lawyers to rub shoulders. Pay It Forward was designed with a different goal in mind. The event's mission is to provide an opportunity for legal professionals, recent graduates, and articling students to meet and network with a focus on finding mentorship and leadership opportunities.

Pawan, a practicing lawyer in Toronto, and Rena, a law student completing her JD in December 2015, both had experience with the lack of innovative legal networking opportunities. They built Pay It Forward under a mandate to provide a forum for members of the legal community, at all career stages, to meet and interact. Having attended last year's event, I can say firsthand that it was refreshing to meet such an eclectic and open-minded group of business and legal professionals.

This year, Pay It Forward is hosting their 3rd annual event at the Law Society of Upper Canada wing in Osgoode Hall. Securing such a traditionally reputable location is, I believe, an indication of both the progress of the event itself, and changing attitudes in the legal profession, with burgeoning interest in forward-thinking opportunities and professionals. Given my distaste for the customary, and enthusiasm for the progressive, it is refreshing to see a traditional venue hosting an innovative event.

Speaking with Rena and Pawan, they are already looking to the future, with plans to expand in 2016. The hope is for Pay It Forward to grow as both an event and a movement, with an expanded team and multiple networking events and opportunities. For those interested in attending this year's event, tickets are on sale now at <http://payitforwardlaw.weebly.com/>. Pay It Forward's 3rd annual event will be held on 24 September 2015 at Osgoode Hall, 130 Queen Street West. ♦



► Pawan Sahi and Rena Sangha are the driving forces behind Pay It Forward.



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Not In My Back Yard

Why hosting the Olympics would be the worst thing to ever happen to Toronto.

NADIA ABOUFARISS › OPINION EDITOR

PARDON THE HYPERBOLE. The Great Fire of 1904 was certainly worse, and the decision to build the Gardiner expressway would at least be on the short list. Did you know that not only does it completely ruin the lakeshore, but they also tore down a popular amusement park to build it?

If you didn't have the pleasure of living in Toronto this summer, let me fill you in on what you've missed. After initial reports of apathy, the city got pretty caught up in the excitement of hosting the Pan-Am games. Panamania—combined with the fact that the deadline for placing an Olympic bid falls in September—made it no surprise that reports started emerging in early August that city hall was considering a bid for the 2024 summer games.

Around the same time, the city of Boston, considered one of the top contenders, decided to pull their bid. Why? The mayor's official comment was that it would place the city and its taxpayers at risk of overspending, and it seems that public outcry and a hashtag campaign spurred this decision. I'm not one to easily side with the residents of Boston, as an avid hater of all of their sports teams and a native New Yorker, so I can't believe I'm saying this in print, but Boston was totally right. Hosting the Olympics is a terrible idea. Here are a few of the many reasons why Toronto should not bid for the Olympics.

It will cost \$50-60 million dollars to bid.

That's right, just for the bid. If Vancouver's \$34 million dollar bid is any indication, likely half of this amount will be paid by the taxpayers of this city. And a win is by no means guaranteed. If you were into betting on these sorts of things, it looks like Los Angeles is the current favourite in North America, but the safe money would be to pick one of the European contenders—Paris, Budapest, Rome, Hamburg—since it would be very rare for the games to skip Europe three times in a row. By the way, this amount does not include the bribery money that seems to be necessary in order to secure a win (see Corruption).

If we win the bid, the city is almost guaranteed to lose a lot of money.

The summer games are especially hard to earn a profit on due to their larger price tag. An Ernst and Young report has the cost for Toronto hosting the games at somewhere between \$9-16 billion dollars, not including the inevitable overruns. The only cities that have profited (I'm looking at you, LA) have done so because of austere planning committees that somehow managed to not build all that much stuff. That will not happen here: the need for new infrastructure is one of the main reasons people want the Olympics in Toronto. Of course, the worst case scenario for the games happened in Athens, where overspending to the tune of \$15 billion contributed to an entire country's economic collapse. Although that is an extreme result, the best comparison we have in Canada isn't exactly positive. The 1976 summer games in Montreal ran 800% over budget, and it took the city exactly



► Nicknamed the "Big Owe," Olympic Stadium has lain dormant in Montreal since the Expos left the city in 2004. Photo credit: archdaily.com

thirty years to pay off its \$1.5 billion dollar debt. But hey, at least they have Olympic Stadium.

Corruption is rampant.

Even the Pan-Am games were not lacking for a scandal, as leaked documents revealed officials were using tax dollars on everything from breakfast tea at Starbucks to pricey team meals. Behaviour like this is the norm at the Olympics, and the list of corruption charges against the IOC could fill a book (University of Toronto Professor Emeritus Helen Jefferson Lenskyj has written two). There have been a number of different bribery scandals during the Olympic events, but the largest documented one occurred at the 2002 Salt Lake City winter games, where the city's organizing committee spent between \$3-7 million dollars on "perks" for the IOC members and their families, such as plastic surgery, college tuition, and lavish vacations. Let's see, there's also former IOC vice-president Kim Un-Yong who was jailed for corruption, the dubious aristocrats that make up most of the officiating members, the black market for tickets that follows the games around, the entirety of the 2014 Sochi Olympics (which human rights groups attempted to boycott), numerous reports of collusion between judges...the list goes on.

A lot of the positive spin on the Olympics revolves around the idea that it'll help promote the host city in a positive light, and help put the city "on the map." Personally, I don't see how the largest city in Canada needs help in map placement, and besides, this summer has already seen Toronto in the news on numerous occasions, with the Pan Am games, the Toronto Blue Jays becoming one of the most exciting

teams in sports (go Jays!), Drake's ever increasing popularity, and at least two top spots on somewhat questionable internet lists of "most livable cities."

Unfortunately, the last poll I looked at had Torontonians at 61% in favour of bidding for the Olympics. I really think that the taxpayers of this city should be asking for much more from city hall. For \$50 million, or \$10 billion, I can think of a lot of ways Toronto can place itself in a global spotlight, and fix its infrastructure problems, without having to resort to an Olympic spectacle. ♦

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Trigger Warnings

Spoiler alert: they aren't news.

SHANNON CORREGAN › STAFF WRITER

WITH STUDENTS HEADED back to university campuses this September (or August, as the case for some of us may be), one of last year's most fraught topics is returning to relevance for fall 2015: the question of whether or not university professors should be required to include trigger warnings on classroom syllabi.

The debate around the pros and cons of trigger warnings has existed online for years, but did not make it into national media coverage until last year. In 2014, there was a sudden explosion of mainstream editorializing on the topic. As the debate moved from online to the physical space of the classroom, the question became: do students have the right to expect lecturers to inform them of potentially triggering material beforehand, or is this request symptomatic of the decline of free speech on university campuses? Even worse, do they hinder education by coddling students?

Universities are arenas wherein we expect students to become prepared for what 'the real world' will throw at them. Through this lens, anything that 'coddles' students is most likely negative since it interferes with this preparation. Trigger warnings are perceived to be a capitulation to excessive sensitivity on the part of some students. (According to Jerry Seinfeld, from this perspective trigger warnings seem to be part of a shift in campus culture where students are "too PC" to take a joke.)

This issue is especially pertinent for law students because much of the work we will be involved in is associated with disagreements, unpleasantness, and situations that are offensive to at least someone's sensibilities. Conflict is our stock and trade: we are preparing ourselves for a career in handling disagreements of varying styles and stakes. If we are not prepared in the classroom now, how can we expect to engage with these issues adequately

in our professional lives? More importantly, what does it say about the culture of a law school that censors its classroom discussions, for whatever reason? Censorship, free speech, and the honest exchange of ideas in the classroom are all things that universities must take extremely seriously.

Thankfully, trigger warnings have pretty much nothing to do with the aforementioned concerns and issues. The widespread engrossment over the connection between these concerns and issues to trigger



► Photo credit: familyinequality.wordpress.com

warnings demonstrates a fundamental misunderstanding about what trigger warnings are, and where the impulse to implement trigger warnings is coming from.

Trigger warnings are not red cards that students wave to get out of conversations involving sensitive or offensive topics. Focusing on language like "sensitive" and "offensive" inaccurately shifts the conversation to a student's feelings, where the immediate response is a simple "toughen up." Trigger warnings inform students of potentially triggering material that will be covered in lectures and readings, where triggering does not mean offend but does indeed mean trigger, as in triggering Post-Traumatic Stress Disorder. Trigger warnings allow students, the example most commonly cited is students who have survived sexual

assault, to prepare for engagement with the topic rather than having the issue sprung on them in a way that may be damaging or harmful.

Often, trigger warnings are as easy as saying, "Read Chapter 5 for next week, and please be aware that some of these cases deal with sexual assault." Most lecturers already do this because it is simply good pedagogy. These actions do not detract from students' learning, but enhance it. Additionally, professors are not prevented from dealing with difficult topics, but instead instructors are prompted to engage with their awareness that, yes, certain topics are difficult, and that some of their students will likely have

intimate experiences with these difficult subjects. Indeed, the fact that trigger warnings both require and signal this kind of awareness helps us examine where trigger warnings are coming from, and it's not the desire to simply avoid emotionally difficult material. Trigger warnings allow traumatized students to absent themselves from conversations if they wish, but they also provide an opportunity for instructors to frame conversations in a way that acknowledges the reality of their trauma, which is helpful for everyone who honestly wishes to engage with the material.

Students who need trigger warnings are not refusing to engage with the material; they have already engaged with it, and in a way that none of us would choose for ourselves if we had the choice. It's a privilege to be able to say that you do not need a trigger warning.

The question of how to engage with the issue of rape in law school came to the fore in 2014 with Jeannie Suk's article, "The Trouble With Teaching Rape Law," and it remains relevant. Suk observed that, "If the topic of sexual assault were to leave the law-school classroom, it would be a tremendous loss—above all to victims of sexual assault." This is an important truth. But providing trigger warnings reframes the conversation in a way that is respectful of survivors' experiences. Indeed, in the conversation about rape, rape survivors' voices should be foregrounded, not removed, and acknowledging the difficulty of that conversation is a crucial step towards having it honestly.

In this sense, trigger warnings are not actually 'news' insofar as they represent anything new happening in campus conversations. The phrase itself may be a relatively new one to most of us, but it represents the next stage in our ongoing conversation about power, and who gets to control the narratives that are presented in the classroom. Pretending that students approach difficult subjects untouched by their own experiences leads us to a less honest conversation, and takes us further away from the hard truths of 'the real world.' ♦

"...providing trigger warnings reframes the conversation in a way that is respectful of survivors' experiences."

THUMBS DOWN



Ashley Madison.

Second Class, Second Rate

Early thoughts on second class citizenship in Canada.

JERMAIN VIRGO › CONTRIBUTOR

IN MAY 2015, Bill C-24—ironically titled the ‘Strengthening Canadian Citizenship Act’—came into effect. For the first time ever, Canada imposed a tiered level of citizenship. While the government has touted the bill as a cost-effective method for fighting terrorism, legal experts around the country have suggested the main effect is the creation of a second class of citizens. This poses great concerns for all Canadians and fundamentally changes what it means to be a Canadian citizen.

Under the new bill, Canadian citizens who have no other citizenship and no right to obtain citizenship from another country have become the First Class. This First Class is not directly affected by the bill. However, the Second Class—Canadian citizens who hold dual citizenship or Canadian citizens that have a right to obtain citizenship from another country—are now at risk of losing their Canadian citizenship.

The grounds for revocation are currently limited to acts of terrorism and treason, which may seem like reasonable grounds at first glance. Section 10(2)(b) of Bill C-24 permits the Minister to revoke a Canadian’s citizenship if she

commits “a terrorism offence as defined in section 2 of the Criminal Code—or an

offence outside Canada that, if committed in Canada, would constitute a terrorism offence as defined in that section—and sentenced to at least five years of imprisonment.” The problem is that the bill “... impose[s] exile as an additional form of punishment. It imposes levels of citizenship rights for the first time in Canada. It is unfair and discriminatory.” Essentially, Second Class citizens are punished twice for the same crime. Yet this violates one of the oldest, most essential legal principles: the rule of law, which states that every citizen shall be equal under the law. As a Canadian citizen, whether you are a white male or a black woman, a young person or an old person, a dual, naturalized, or native citizen, you are supposed to be treated equally under the law. That is what it means to have a Canadian citizenship: equal rights, equal protections, equal punishments. Bill C-24 violates those principles and in so doing violates Canadian citizenship as a whole. Moreover, Canada prides itself on being one of the most multicultural and welcoming countries in the world. To allow the creation of Second Class Citizenship is not only foolhardy, but a grotesque violation of all that it means to be Canadian.

Second, whether or not you believe committing an act of terrorism or treason is grounds for losing one’s citizenship, the method Bill C-24 relies on to determine what constitutes terrorism is faulty. This is because first, it is not Canada but other countries that decide the definition of terrorism, and second the definition of terrorism is often grounded in political context. During times of political strife many governments frame competing political groups as terrorists and levy false charges against them. This means Canadians who have done no wrong could be stripped of their citizenship. For example, Nelson Mandela, who was awarded Canada’s highest accolades and given honorary citizenship, was falsely convicted of what could be considered an act of terrorism and

sentenced to life in prison by the South African government. Under Bill C-24 Mandela could be stripped of his citizenship and exiled. A law that would punish one of the greatest human rights activists for being framed by a corrupt foreign government is certainly not a law worth having.

Third, the bill does not criminalize conduct in Canada pre-dating the relevant sections of the Criminal Code but includes that conduct abroad. This has the strange effect of allowing citizens convicted of terrorism against Canada in the past immunity, so long as the offence was committed in Canada. For example, citizens convicted of terrorism during the 1970 FLQ crisis would retain their citizenship even though Canada was the direct target, but anyone committing the same conduct abroad would lose their citizenship (CBA 24). That is simply absurd.

Fourth, according to Section 10.1(2) of the bill, “If the Minister has reasonable grounds to believe that a person, before or after the coming into force of this section and while the person was a citizen, served as a member of an armed force of a country or as a

member of an organized armed group and that country or group was engaged in an armed conflict with Canada” he may revoke that person’s citizenship.

This means people who were suddenly and involuntarily drafted to fight against Canada could lose their Canadian citizenship even if they never saw active duty, were vehemently against the conflict, and vacated as soon as possible. This is counter-intuitive, especially since many immigrants come to Canada precisely to escape that sort of violence.

Moreover, it is not clear what constitutes an “armed conflict with Canada.” If a member of a political group you were with threw a shoe at a Canadian

delegate, couldn’t that be construed as an armed conflict with Canada? Are we going to strip people of their citizenship for poor (but non-injurious) political behaviour and acts committed by third parties? Just how widely may the bill be interpreted? Nobody knows. Which is why the fifth point of interest is the incomprehensible language of the bill.

According to the Canadian Bar Association, “Bill C-24 uses excessive cross-referencing within the Act and to previous citizenship legislation to the point of near incoherence. This results [in] the legislation being inaccessible to the public as well as many public servants, politicians, lawyers, and judges, delayed processing times for citizenship applications and an increased backlog, and an increased burden on Canadian courts. Plain language drafting is in the interest of all parties.” When a group of trained legal professionals like the CBA says your law is incomprehensible and needs to be fixed, your law is incomprehensible and needs to be fixed. Without clear laws nearly anything can be read in, which could lead to terrible misinterpretations and unjust applications.

Finally, and possibly the most concerning problem with the bill, is that it designates the Minister of Citizenship and Immigration as the judge rather than a trained Federal Court justice, as was the case in the past. As Canadian citizens we have the right to be tried by a jury of our peers or at least a competent purveyor of the law. One man is not a jury. Nor is this lone individual likely to be a ‘peer’ in any sense of the word. The Minister of Citizenship and Immigration has historically been an aging white male, a far cry from the young, culturally diverse immigrants that typically apply for citizenship. Most disconcertingly, the Minister may have zero legal experience. Chris Alexander, the current Minister, does not hold a law

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“It imposes levels of citizenship rights for the first time in Canada.”



► Photo credit: bccla.org

Harper and His Many Omnibus Bills

Tracking the various omnibus bills implemented by the Harper government.

SIMMY SAHRA › NEWS EDITOR

OMNIBUS BILLS: one of Harper's favourite tools; used akin to the invisibility cloak in Harry Potter, as most of the public has no idea what changes are being made to many laws which change our daily lives.

Generally, omnibus bills cover a diverse range of topics, and it is a single document accepted in a single vote by the legislature. However, because of the diverse range of topics and the large size, typically omnibus bills limit openings for debate and scrutiny. For these reasons, omnibus bills create possibilities for laws to be created through an undemocratic method, and Parliament generally does not have the ability to have meaningful debates about the issues.

Historically, although this method has been criticized as undemocratic, omnibus bills have been a useful tool to speed up the legislative process to implement social change. For example, in 1967 Pierre Trudeau introduced the *Criminal Law Amendment Act*, which decriminalized homosexuality, anal sex between adults, abortion, and contraception.

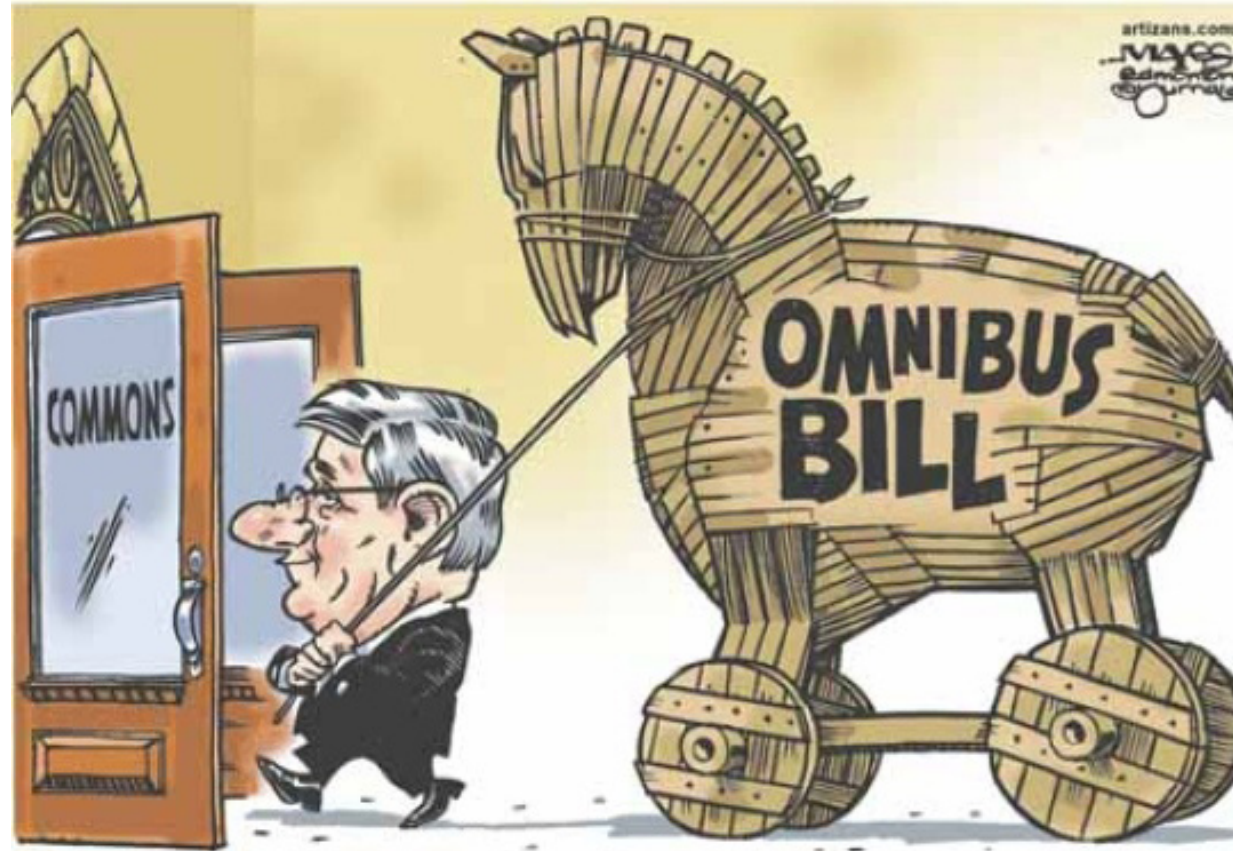
However, the current political trend has been developed by the Harper government to utilize omnibus bills as a tool to bypass the democratic process to implement bills, which are counteractive to social change. Marginalized communities have been targeted to a large extent by omnibus bills implemented by the Harper government. Exploring the operation of Bill S-7, Bill C-43, and Bill C-24 demonstrates the negative effect omnibus bills have had on marginalized communities in Canada.

Bill S-7 is also known as the "Zero Tolerance for Barbaric Cultural Practices Act," which is generally intended to bar polygamists and forced marriages. The Bill amends immigration and criminal laws with the purpose of keeping polygamists out of Canada, and preventing women and girls from being married against their will. This is the perspective and justification being reproduced by the Conservative government to the public.

This Bill has had a great effect on women and racialized communities, and was heavily criticized by social justice organizations such as the Schlifer Clinic and the South Asian Legal Clinic of Ontario (SALCO) as "another example of the government failing to listen to survivors, and targeting racialized communities for exclusion and deportation from Canada." The Bill was also criticized as reproducing institutional barriers to marginalized communities reporting violence and having access to support. SALCO condemned the Bill as victims would be less likely to report forced marriages because of their internal struggle with placing their family at risk. Secondly, "due to increased stigma, perpetrators of forced marriage will be more skilled at hiding their attempts at forcing marriages, and the unfortunate result of creating these barriers is that victims will go deeper underground, instead of seeking support."

The criticisms formed by advocacy organizations

"Marginalized communities have been targeted to a large extent by omnibus bills..."



► Photo credit: yorktonthisweek.com

such as the Schlifer Clinic and SALCO demonstrate the lack of cohesion and cooperation between the government and advocacy organizations in forming this Bill. As a result, the Bill was produced with very little understanding of what the people who are affected by the Bill truly need. Instead the Bill reproduces the stigma of gender violence being connected to the "other." The Schlifer Clinic stated, "the Act betrays a flawed ideology that locates violence against women as a "cultural" issue which only occurs in some communities, and ignores statistics and women's lived reality that shocking levels of violence against women occurs every day in Canada across cultures."

Moving on to Bill C-43, which deals with the prevention of access to social assistance for refugees, sections 172 and 173 allow provinces to deny social assistance to refugee claimants, and others who lack

permanent residency status. Certain groups would not need to meet the residency requirement to be eligible

for social assistance. These include Canadian citizens, permanent residents, victims of human trafficking with a temporary resident permit, and refugees who have been recognized as such by the Immigration and Refugee Board (IRB). It is the categories of people who are not listed that would be the most adversely affected; namely, refugee claimants who have filed their claim at a port of entry or inland at a Citizenship and Immigration Canada (CIC) office.

Many advocates have found that Bill C-43 demonstrates the "cruel and unusual treatment of refugees and migrants in Canada to have hit a new high

water mark under this Conservative government." The changes have been drastic, where the number of family-class immigrants dropped by ten thousand in the first four years the Conservative Party of Canada formed government, and furthermore the number of refugees has dropped by 25 per cent. The Report released by Citizens for Public Justice also demonstrated many refugees under this new legislation will no longer be able to support themselves, and the capacity of organizations who provide services to them would also be greatly impeded as their funding is cut back. Additionally, the Report discredits the federal government's claim that the policy would save money for taxpayers, and details the domestic and international legislation Bill C-43 would likely violate.

Finally, Bill C-24 is known as the "Strengthening Canadian Citizenship Act," where it amends the *Citizenship Act* to update eligibility requirements for Canadian citizenship, strengthen security and fraud provisions, and amend provisions governing the processing of applications and the review of decisions. Bill C-24 is particularly dangerous because of the wide range of power and discretion it wields to the government. The power the government holds to revoke citizenship for those guilty of a crime is problematic; however, it becomes very alarming for those who are not. Furthermore, "legal experts warn that the list of offences that could lead to the removal of citizenship might be expanded in the future."¹ Therefore, this Bill opens the door to further social injustices for marginalized communities.

Essentially, Bill C-24 punishes criminal activity with exile, which is a practice abandoned hundreds

Our Brave New Legal World, its Epistocrats and its Discontents

MICHAEL MOTALA › STAFF WRITER

“WE LIVE IN rapidly changing times,” writes Osgoode’s Associate Dean Trevor Farrow. Ethical questions are “continuously changing as a result of global trends.” The “complexity of today’s world is an issue for all lawyers.” Needless to say, globalization has been in vogue in the academy for more than a decade, not just in professional circles. So why is there so much talk and so little impact?

Why do tuition and licensing fees increase year after year while the access to justice crisis worsens? Why is there an ever-growing gap between the supply of graduates and the availability of jobs? Why do students increasingly suffer from mental health issues under internecine academic competition? Why is there a law school in BC that actively discriminates against LGBT? What accounts for the legal academy’s cultural and institutional inertia in the face of our profession’s—and Canadian society’s—mounting social and economic challenges?

Our profession’s history is intimately connected with the forces of globalization, but not in the frame of reference adopted by most scholars. The definition of globalization is contested, to be sure. But there is common ground in the idea that it entails the spatial transformation of social and economic relationships, increasing flows of activity, interaction, and power.

Canvassing the profession’s history in Ontario, and the manner in which law as an institution has mediated social and economic relations, it is apparent our gatekeepers and regulators have used the institution as an instrument of oppression. The unspoken aim is to perpetuate and insulate the legal institution’s social and economic privilege from the rest of society.

Ontario’s legal and political model originates in the United Kingdom’s imperial enterprise. Globalization in this era entailed the demographic spread of ethnic Europeans to other parts of the world. In addition to physically displacing indigenous peoples, European settlers used the law as an instrument to disempower them. Courts never engaged with the basic question of their own sovereignty in the context of European conquest. Records indicate judges and lawyers were overtly discriminatory to their subjects.

The notion that indigenous peoples were lawless imposed a social reality that dehumanized the native population. This experience has become so embedded in the collective consciousness of racialized groups that it continues to define the institutional features of legal practice and society at large. Still today, less than a handful of aboriginal candidates secure a spot in law school despite the academy’s best efforts at outreach.

The Law Society of Upper Canada, founded in the 18th century, was modelled after the Inns of Court in the UK. As the local Canadian industry moved from Montréal to Toronto in the 19th century, Canada’s robber barons installed an insular community of economic power, imitating the British model of aristocratic privilege. The law firm was the nexus of finance and industry, then as now. In fact, William Osgoode—Ontario’s first Chief Justice and the namesake of Ontario’s original law school—was a prominent member of the Family Compact. As Constance Backhouse has argued, the wealthy protestant elite who presided over the LSUC fashioned the legal profession in their own image.

Next came the period of globalization from confederation to the Second World War.

Inflows of immigrants enriched Canada’s ethnic and cultural complexion. Therefore, the legal profession’s gatekeepers made rules to entrench racial and social hierarchies. With substantive law such as the Chinese head tax, Japanese internment during the war, and the Komogata Maru incident, the professional organization constituted itself as a bastion of whiteness to reinforce male Anglo-Saxon hegemony in Ontario.

The history of Ontario’s legal profession illustrates how the flows of globalization have empowered a predominantly white and insular legal and capitalist elite. Too little ink has been spilled on the perpetuation of socio-economic privilege in law today, and what that implies for the economy and society at large. In fact, U of T’s law and economics czar Michael Trebilock mentioned tuition rates only once and “parenthetically” in the latest review of legal aid in

Ontario. That’s rich, coming from someone who makes over \$300,000 per year (although I suppose that’s only worth approximately nine and a half U of T students).

So often, Canadian institutions adopt the intellectual, pedagogical, and institutional forms of our peer jurisdictions. To this end, globalization has

contributed to our profession’s unthinking pursuit of isomorphism with the US and UK. In 1998, following the deregulation of tuition for

Ontario’s professional programs, the dean of U of T’s Faculty of Law Ron Daniels led the charge. Adopting the justifications of the Neoliberal law and economics canon, originating at the University of Chicago, Daniels sought to raise the tuition rate so that

U of T could compete with top US schools. The province’s other law faculties followed

suit, yet again evincing a pattern of institutional isomorphism. Just last year, U of T rewarded his effort with a free degree despite opposition from students.

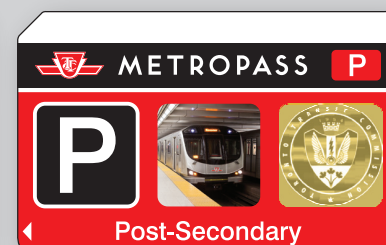
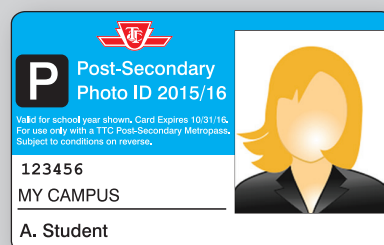
It is writ large that the growing price tag for tuition is instrumental in the high cost of legal services, and the unavailability of sufficiently remunerated legal jobs. With growing debt loads, providing lower cost services has become unimaginable. As markets go through cycles of boom-and-bust, the number of articling positions naturally grows and contracts. But because law school is a seller’s marketplace, with ten times more applicants than spaces, the price tag can go against the market in spite of economic conditions.

What is more, in 2005 Statistics Canada reported

“The law firm was the nexus of finance and industry...”

» see **LEGAL WORLD**, page 15

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TORONTO TRANSIT COMMISSION

Jurisfoodence: Adventures in the TO food scene

Food Adventure #1: Bar Volo

ANTHONY CHOI › STAFF WRITER

Bar Volo

587 Yonge Street

CATEGORY: Beer bar

ATMOSPHERE: Casual, laid-back

ADDITIONAL INFO:

Has outdoor patio. No reservations taken.

WEBSITE: <http://www.barvolo.com/>

OUR FIRST REVIEW to start the school year is about the well-known beer bar, Bar Volo. Originally opened as an Italian restaurant, the establishment underwent several transformations to become one of beer lovers' go-to locations in Toronto. Indeed, this reputation was one of the primary reasons why I suggested the locale to a friend as a place to unwind and relax on a warm and sunny Saturday evening.

When we first arrived, the first thing that struck me was the casual and laid-back atmosphere that permeated the entire place. The bar was not particularly spacious, but instead of making one feel crowded or claustrophobic, it lent itself to a warm and cozy feeling. The rustic wood and leather furnishings, old-world chandeliers, and various beer-related accoutrements lining the walls completed the picture. Given the incredibly pleasant summer weather outside, we decided to soak up some sunlight at one of the communal tables on the outdoor patio overlooking Yonge Street. The crowd consisted mainly of 20- to 30-year-olds, and emanated a certain "hipsterish" vibe reminiscent of many places in Montreal.

One of the major selling points Bar Volo emphasizes is its vast selection of beers. Indeed, its website states that the bar features "twenty six rotating regional beers, wines and ciders on tap along side six traditional cask-conditioned ales and a rare bottle beer selection." We were not disappointed as, true to their word, we saw a giant chalkboard listing the wide selection of beers available on the far side of the patio, with each entry labelled with a letter or number to make ordering easier. Admittedly, my friend and I were more beer enthusiasts than beer connoisseurs, and the sheer number of possibilities led us both to initial expressions of "huh" and "where to begin?" I decided to start off with the Dieu du Ciel Moralité, having recognized it from my undergraduate years in Montreal. My friend, meanwhile, ordered an Okanagan Cider.

Bar Volo's second selling point—and what we truly came for—is their food, which includes a variety of cured meats, cheeses, pizzettas, crostinis, and other beer-friendly dishes. Both of us could live off cured meats if we had our way (high blood pressure and the associated increase in risk for heart failure or stroke aside), and the night was a parting celebration for my friend, who was departing to the West Coast to start a new chapter in his life. With good reason, we followed the modern-day adage of "go big or go home" and ordered almost every type of meat available. Chorizo, prosciutto, kielbasa, coppa, soppressata, carpaccio, the list goes on. Adding to this decadent feast, we included duck liver pâté, pâté de campagne, and some taleggio and manchego cheeses. The meats came



► Photo credit: Torontolife.com

in tapas-sized dishes and were a reasonable \$7 to \$10 each, while the cheeses and pâtés came in portions of about 75g for \$7 and \$14, respectively. To say that the quality of the food was top-notch and the taste sublime would be an understatement; even the accompanying olives and rustic bread were first-class.

By the time we finished, the sun had long set, the candles were out, and the place was abuzz with activity befitting that of a Saturday night. Regretfully, the sheer size and gluttony of our meal made us physically incapable of sampling any additional beers. That grand task would have to be postponed until a subsequent visit.

In the end, Bar Volo certainly surpassed all our expectations. The only potential issue is the limited seating, which could make getting a place to sit difficult during popular hours. However, the food was unique and positively delicious, the staff friendly and

helpful, and the atmosphere perfect for anyone looking for a place to hang out with friends or for a casual date. I would most definitely go again. ♦

FINAL SCORE



How J.P. Ricciardi got Sidetracked from executing Moneyball in Toronto

KENNETH CHEAK KWAN LAM ›
SPORTS EDITOR

WHEN J.P. RICCIARDI was hired as the General Manager (GM) of the Toronto Blue Jays, he was given the initial mandate to slash payroll because his predecessor Gord Ash had constructed an eighty-eight million dollar roster that failed to make the post-season. More importantly, Ricciardi was supposed to create “mini-Oaklands” by following the “Moneyball” philosophy of his mentor, Billy Beane, who preaches emphasis on analytics. This emphasis was supposed to translate into strong drafting and player development as well as locking up young and promising players to club-friendly long-term contracts. Unfortunately, during his eight-year tenure as the captain in charge of the ship from 2001–2009, the apprentice got sidetracked.

Whereas Ricciardi initially collected young players with good upsides (e.g., acquiring Rookie of the Year third baseman Eric Hinske along with starting pitcher Justin Miller from the Oakland Athletics for closer Billy Koch), he went on to hand out numerous long-term contracts that stripped the team of its financial flexibility. These contracts ranged from extensions given to up-and-coming players who (despite their upsides) had yet to prove they could produce on a consistent basis (e.g., inking both center fielder Vernon Wells and Hinske to five-year deals even though both were still under team control) to overly generous contracts supposedly meant to influence unrestricted free agents (e.g., signing both closer B.J. Ryan and front-of-the rotation starting pitcher A.J. Burnett to five-year deals for forty-seven million dollars and fifty-five million dollars respectively). Ricciardi also went all in by first trading pitchers Dave Bush and Zach Jackson along with outfielder Gabe Gross to the Milwaukee Brewers for sweet swing first baseman Lyle Overbay (and pitching prospect Ty Taubenheim), then following up that deal with shipping mid-rotation starting pitcher Miguel Batista and second baseman Orlando Hudson to the Arizona Diamondbacks for slugging third baseman Troy Glaus (and Sergio Santos). In an attempt to end Toronto’s twelve-year playoff drought, Ricciardi also signed gold-glove catcher Bengie Molina to a one-year contract worth five million dollars with a mutual option for a second year.

With an assembly of such high-end talent, why did the club fail to overtake powerhouses like the New York Yankees and the Boston Red Sox and recapture the American League East title for the first time since 1993, or at least win the wild card? Simply put, some of the moves Ricciardi made were very much the “high-risk, high reward” type, and they backfired. For instance, although Ryan was a highly-sought after and aggressively recruited unrestricted free agent, he was coming off a career year after saving 36 games for the Baltimore Orioles in the preceding season (2005) as a first-time closer. Prior to this breakout season, Ryan had been used predominantly as a middle reliever (1999–2003) until he was

elevated to the setup role in 2004. In other words, it was a risky gamble to ink Ryan to such a lucrative long-term contract when he had not proven he could be a dominant closer for a sustained period of time. Likewise, even though Burnett was heavily pursued by several teams (mostly because of his ability to throw a fastball with the highest velocity among all starting pitchers in Major League Baseball in both the 2002 and 2005 seasons at an average of 94.9 and 95.6 miles per hour respectively) before agreeing to terms with the Blue Jays, he had never won more than twelve games in a single year over the seven seasons as a Florida Marlin. Beyond this, Burnett missed significant playing time in both the 2003 and 2004 seasons due to a serious injury that required surgery. Essentially, Ricciardi was gambling on Burnett being able to translate his raw talent into wins.

Similarly, despite Ricciardi’s high praise of Overbay’s ability to hit for a high average with gap

power (he held the Brewers’ club record for most doubles in a single season with fifty-three), Overbay

only batted over .300 once in three previous seasons prior to being traded to Toronto, hitting .276, .301 and .276 in 2003, 2004, and 2005, respectively. While a batting average in the mid .270s is not bad, it is by all accounts quite pedestrian and certainly nowhere near elite, especially knowing that Overbay had never hit more than nineteen home runs in a single season at that point in his career even though he plays a traditional power position as a first baseman. The fact that Ricciardi dealt for a player who ended up being a career .266

hitter indicated that the Blue Jays GM was gambling on Overbay being able to become the next Mark Grace when the former was more suited to a reserve role as a defensive replacement.

Finally, Ricciardi’s decision to sign both Wells and right fielder Alex Rios to seven-year contract extensions for \$126 million and \$69,835,000 respectively did not pan out as both players lacked consistency and failed to perform to expectations. In fact, Wells regressed to such a degree, both offensively and defensively, that he was widely considered to be “untradeable” at the time because his contract was heavily back-loaded. As for Rios, he became so inconsistent that he was eventually placed on waivers on 7 August 2009 before being claimed by the Chicago White Sox three days later. In losing Rios to an opposing team and receiving no assets in return (with the only consolation being that Rios’s contract is now off the Blue Jays’ books), Ricciardi’s shortsightedness is clearly exposed.

All in all, Toronto never really came close to winning the American League East title under Ricciardi. The team’s best season came in 2006 (the season immediately after all of the aforementioned moves were made) when the club won eighty-seven games. However, the win total is misleading as an indicator of the franchise’s competitiveness, as Toronto finished a distanced ten games behind the division winner the Yankees. In essence, with newly injected funds to work with from Rogers, Ricciardi succumbed to the temptation of trying to buy a championship with free agent acquisitions and short-term trades. In doing so, he failed to execute the “Moneyball” game plan and bring a championship back to Toronto. ♦

“...some of the moves Ricciardi made were very much the ‘high-risk, high reward’ type...”



▶ J. P. Ricciardi was the GM of the Toronto Blue Jays from 14 November 2001 to 3 October 2009.
Photo credit: 6.media.tumblr.com

Fantasy: Forsaken

KAREEM WEBSTER › CONTRIBUTOR

I PRAY EVERY Sunday.

Before you label me as a zealot-dogmatist, I would like to inform you that a lot of my praying occurs during afternoon football games.

I am a football fanatic. I watch the draft. I exceed my allotted mobile data to follow the off-season signings and trades. I watch the 1:00 p.m., 4:00 p.m., and late night games on Sunday. I watch the terrible matchups on Thursday nights because it's still football. I watch all of the highlights for the week's games. I follow all of the pertinent analysts on social media. Statistics ooze through my pores. I am simply in love with the game.

One thing that I don't love: fantasy football. I detest it. It is the harbinger of doom, bane of autumn, and a malevolent force that holds a large contingent of the population hostage on weekends.

Every August, I go through the same thing. If you, as a person with free will, have abstained from fantasy football—as I admonish you—do not ever join. You will regret it. Trust me.

For the unknowing, fantasy football allows users to act as manager for a virtual team in the National Football League (NFL). Points are rewarded based on touchdowns thrown or scored, yardage accrued, and (possibly) receptions made. Each fantasy team matches up against another in a head-to-head every week or is ranked against the entire league over the course of the season. Fantasy players are either drafted or auctioned where users use virtual money to bid. Players that were not drafted are in a pool called the waivers. The 'free agents' from this pool are added to teams throughout the season. That is the game in its simplest form, although it can get more complicated, depending on the league settings.

Impressed? Regardless, without further ado, here are five reasons why fantasy football sucks:

1. There is little, if any, skill required to win a matchup or league. I mean, clearly your fantasy team is better than your opponent this week. Yet lo and behold, your stacked roster is choking while your inferior opponent is dancing circles around you. By the way, that player who you wanted to pick up off the waiver wire just put up thirty fantasy points. Expletives galore.

2. Consistency is often unpredictable. Remember the matchup that Aaron Rodgers had against that porous defence? Wasn't he supposed to throw at least four touchdowns? Well, he only threw one, fumbled the ball after a sack, and threw two (yes, two) picks. Also, that tailback who has never started a game



► Photo credit: Esquire.com

in his life just totalled two hundred yards from scrimmage.

3. An early injury can ruin your entire matchup. A 1:00 p.m. game pits Jamaal Charles against the turnstile run defence of Cleveland, where he is literally and figuratively salivating at the matchup. You feel pretty good about your chances. Uh-oh, Jamaal Charles has just been carted off the field with what appeared to be an ankle injury. Halftime comes and goes; Charles' return is still questionable. At the beginning of the fourth quarter, it's reported that he will not return, leaving you with eleven unimpressive rushing yards.

4. The player that you drafted in the top ten or twelve may not finish anywhere close to the top ten or twelve in scoring at the end of the year. Don't get me wrong; there are some players who are consistently at the top of their game. Running backs like Matt Forte, Adrian Peterson (barring injury and/or suspension), Jamaal Charles, and Marshawn Lynch are perennial leaders in scoring at their position. Receivers such as Antonio Brown, Jordy Nelson, Demaryius Thomas, Julio Jones, and Dez Bryant

will likely be somewhere in the top eight or so (you get the point). At the same time, look at players like Ray Rice, Calvin Johnson, Trent Richardson, or Zac Stacy. All of them excelled for one year in their position, then had a subpar year immediately after. It can happen and your draft strategy is not impervious to the underachievement bug.

5. It is a game and things do happen that are beyond your control. Blowouts, inclement weather, and momentum shifts often alter the game plan, and thus, affect the success of your team.

Hence, every December I retire from fantasy football. Every June I sign up to play again.

Remember, do as I say and not as I do.

Fantasy football makes or breaks my Sunday. My Monday is either great or wrought with anguish. I torment myself over which player to target on the waiver wire. I hate myself for benching the player who outscored three of my starters. I love myself for ignoring the masses and starting Eli after he torches Seattle. I hate when friends say "Get over it, it's just a game." I love when one of the my opponent's players was a late scratch and they forgot to check the injury report. I hate when my team defence concedes forty points to an anaemic offense. I hate this stupid game called fantasy football. It is the worst thing that has ever been conceived.

At the same time, fantasy football is as popular as ever, and as a sports enthusiast, I would be remiss if I did not discuss the craze that is dominating Yahoo and ESPN online servers from August to December.

THUMBS DOWN



The market collapse.

Omnibus

» continued from **PAGE 8**

of years ago, and most importantly, does not bode well with a democracy. Furthermore, the absence of a judge in the new citizenship stripping process makes the process unfair, and likely unconstitutional. Bill C-24 further impresses the idea of citizenship as a privilege, not a right, where there are redefined narratives of citizenship, and what it means to be Canadian. This is important to note because while they are ‘strengthening’ the citizenship process, the image of the ideal Canadian is being formed to be those without dual nationality; not to mention the fact that the Bill has been widely criticized for its creation of a two-tier citizenship system.

The image of Canada as a multicultural place accepting of those deemed as “others,” is quickly disappearing with Harper’s omnibus bills continuing to mark marginalized communities. Consequently, the Harper Government is using omnibus bills as a tool to change the Canadian landscape and, even more alarming, most of the public is not aware of the drastic changes being made which significantly alter what it currently means to be Canadian. ♦

Sources

“It’s official – second class citizenship goes into effect” *British Columbia Civil Liberties Association* (3 June 2015) online: <<https://bccla.org/2015/06/its-official-second-class-citizenship-goes-into-effect/>>.

Duffy

» continued from **COVER**

know that the law is not on their side, but they are convinced that if they can find a lawyer who will tell them that it is, then they can safely absolve themselves of any wrong-doing. Arguably, the only position more ethically problematic than the person who seeks out such a lawyer is the lawyer who acquiesces to such requests.

Nigel Wright, the former Chief of Staff for Prime Minister Harper, is a University of Toronto and Harvard Law-educated lawyer and is alleged to have coordinated the transaction at the heart of this scandal – the payment of \$90,000 to cover Mike Duffy’s rejected Senate expenses. Although not acting in the capacity of a lawyer, Mr. Wright certainly understood what was happening.

Arthur Hamilton, lawyer to the Progressive Party of Canada, is alleged to have been aware of the repayment plan and allegedly transferred \$13,000 to help cover Mr. Duffy’s legal expenses. Mr. Arthur is an Osgoode alumnus.

Benjamin Perrin, the former legal counsel to the Prime Minister’s Office, testified that he was told by Mr. Wright of his plan to pay back Mr. Duffy’s improper expenses. He was also involved in the negotiations with Mr. Duffy’s lawyers over the repayment of those expenses. Mr. Perrin is a professor of law at the University of British Columbia.

Janice Payne was the lawyer on the other side of table. She was Mr. Duffy’s lawyer at the time and was part of the negotiations.

Complaints were launched with the Law Societies of Upper Canada and British Columbia against Mr. Perrin and with the LSUC against Ms. Payne in 2013. The complaints were dismissed in 2014, but the University of Ottawa professor of law who launched

the complaints questions how thorough or earnest the investigations could have been.

At least four lawyers were allegedly aware of a plan to repay Mr. Duffy’s improperly claimed expenses in order to mitigate the political cost of a scandal. As those on the cusp of entering this profession, we should pause and reflect on how these intelligent and educated people became embroiled in such a scandal.

The pressure in the air at the highest echelons of government must make it difficult to breathe; resisting the weight from the top must be extremely difficult, but whether the pressure was coming from a senator or the Prime Minister, the decision to submit to it was a conscious choice. Lawyers cannot simply claim to be neutral conduits who merely do their clients’ bidding. The *LSUC Rules of Professional Conduct* preclude lawyers from hiding behind their clients’ instructions. Moreover, the *Criminal Code of Canada* makes it an offence to be a party to an offence.

Lawyers do not trade in knowledge; lawyers trade in judgment. When you advertise legal services, you are selling your judgment and are required to exercise independent and critical thinking. When you tell a client that they may skirt or subvert the law with impunity, you do a disservice to the client and to the entire justice system. ♦

^NORTON ROSE FULBRIGHT

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Fantasy

» continued from **PAGE 12**

Anyway, here are five reasons why fantasy football is so damn popular:

1. There is little, if any, skill required to win a matchup or league. This can also work in your favour in games where you had no business winning.

2. You can win a ton of money. You are likely playing to win the league pot rather than just bragging rights.

3. It is enjoyable when you win. You may feel like an idiot when you lose when you look at your bench and realize that playing Greg Olsen over Jordan Cameron would have given you the extra two points needed for this week's victory.

4. Draft preparations and drafting itself do require strategy. Drafting is actually a lot of fun. Deciding when to select your running backs, receivers, and tight ends actually requires strategy, particularly when other members select your targeted players and thwart your plan. It's advisable to be cognizant of the tiers and trends during drafts. Observing the rosters of other draftees helps you predict who will be available in the upcoming rounds.

5. Football has supplanted baseball as America's pastime. The NFL generates more revenue than any other major professional sports association in North America. A lot of fans play fantasy sports and its popularity will only continue to proliferate, leaving you with lots to talk about at the water cooler.

In any case, fantasy football is a minefield. It is a quagmire of melancholy and misery. This insidious creature, hiding in your room, shows its face in the summer.

Fantasy football is the worst. This is my swan song.

Most likely.

Probably not. ♦

Citizenship

» continued from **PAGE 7**

degree of any kind. We could quite literally be putting the lives of extremely vulnerable individuals in the hands of an unqualified, untrained, politically motivated individual. By expediting the process in favour of cutting costs, we may be sending innocent people to their deaths.

If you would like to learn more about the bill, the constitutional challenges being launched against it, or want to sign the petition to repeal the law, visit the British Columbia Civil Liberties Association website at <https://bccla.org/2015/06/its-official-second-class-citizenship-goes-into-effect/>. ♦

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Parkdale

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precedent for others who wish to provide excellent service, do progressive work, but also want the voice and protection of the collective.

In 1977, the articling students at PCLS sought to unionize and succeeded – see *Association of Commercial and Technical Employees, Local 1704 v. Parkdale Community Legal Services*. In 2015, we, the summer students of PCLS successfully unionized. This just goes to show that PCLS remains at the forefront of progressive work by young legal professionals. ♦

Editorial

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Finally, in looking at the ABA's Model Rules of Professional Conduct, Rule 8.4 deals with professional misconduct. In its commentary, the ABA describes the concept of "moral turpitude." This is construed to include offences concerning matters of personal morality, such as adultery, that have no specific connection to fitness for the practice of law. The commentary further states that a lawyer should be professionally answerable only for offences that indicate a lack of those characteristics relevant to law practice such as those involving violence, dishonesty, breach of trust, or serious interference with the administration of justice. From this description, can infidelity to a spouse be evidence of dishonesty and breach of trust to the extent that in such a narrow context these are relevant to the practice of law? To be sure, a lawyer who breaks their marriage vows has committed a breach of trust to their spouse. However, can it fairly be said that this dishonesty should be a reflection of their capability to perform their ethical duties as a lawyer? It raises the question of whether a bad person can be a good professional. Further, would we hold a professional engineer or a physician against this same heightened level of scrutiny?

Assuming that private life falls within the scope of professional scrutiny, the next challenge is defining what we consider good moral behaviour. With a rapidly changing social and moral context from which to develop such standards, it seems impossible to come to a general consensus about what bar (my apologies for the distasteful pun) to measure these professionals against. It is clear that we do not have a shared community standard about sexual activities. Bill Clinton's situation during his U.S. presidency demonstrated that much of the public was able to compartmentalize the president's professional obligations from his private life. The public understood that it is perfectly possible to be competent in one area while, arguably, dysfunctional in another. Clinton is also not an isolated incident. There are countless stories of politicians, media personalities, and others in the public eye who have indulged in equally salacious indiscretions. While for some, this signaled the end of their career—Anthony Weiner and Jian Ghomeshi—for others it certainly did not—Pierre Trudeau and Donald Trump.

It's interesting to note that broad definitions of personal misconduct arguably can be used to exclude certain classes of "undesirables" from the profession. Requiring individuals to have an unsullied private life in addition to their professional excellence may significantly reduce the number of eligible applicants to the bar, leaving only those of a certain social class carrying a very particular set of values. In a somewhat ironic twist, rigorous adherence to a set of standards that very few can meet creates a misperception of the profession as elitist, which seems at odds with the very concept of professionalism. If nothing else though, this could amount to an innovative solution to address the current articling crisis across the country. Welcome to the first day of the rest of your lives, Class of 2018! ♦

THUMBS UP



The new D'Angelo and Blur albums.

Legal world

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that deregulation of tuition in the 1990s—which nearly tripled the cost of law school—negatively impacted enrolment from students with the least educated families. Meanwhile, in Québec and British Columbia, where tuition rates remained fairly stable in the same period, there was no similar finding. Today, McGill’s Faculty of Law charges little over \$7,000 to students, yet it remains competitive with its counterparts in Toronto and around the world.

As a result, students with parents holding a professional degree are the most likely to pursue a professional degree themselves, a more invisible form of socio-economic privilege not accounted for by many critiques. Even a cursory economic analysis highlights that the access to justice crisis is not merely about unmet demand, it is equally about the limits and burdens imposed on labour supply. Granted, Osgoode and other schools have implemented limited programs of back-end debt relief, and contingent income-based loans. But these are band-aid solutions generated for publicity and with little real impact on the student body at large. They are palliative toward the condition rather than curative of the disease.

Isn’t it ironic that the real beneficiaries of this whole cartel model—the professors, and not legal practitioners—are those exhorting us to take action in the access to justice crisis? What a sad irony indeed that increasing tuition renders legal services unaffordable for the average Canadian in need of a lawyer, while promoting the underemployment of its graduates. Rather than a golden ticket it is a fetter. Law school today is not the environment of unbridled intellectualism it could be, but rather an economic bait and switch that breeds misery and discontent among its student body.

Like so many other institutional features of law school, our pedagogy is also an import, imitating Harvard Law’s case-based method developed in the early 20th century. In the first few weeks of 1L, law students are inculcated to be servile and obedient. Hand in your essays on time. Do your pop quiz by this Monday. Embrace the “do as you’re told” culture now and you are sure to succeed in OCIs. This is the law’s vision of professionalism. It’s the way things have always been done.

You have made it into the adult version of elementary school. Now if you can survive the internecine academic competition given effect by the curve, you can make 1L count, and you stand a chance at making



it into the legal workforce. But if you do not, keep in mind there are no refunds. Is law school a sublime meritocracy? Or in a system where one case or rule citation can separate an A from a B, is it actually a culture of false merits?

We are told tuition increases are necessary to enhance the academic program in law school because education is a “people business.” Such an approach overvalues school faculty while ignoring the practicalities of the law school experience, and law students’ expectations. Why should we pay some professors in excess of \$200,000 when we could hire three up-and-coming legal academics to teach and write even more for the same price?

It is time our legal academics realize we are striving for an A+ intellectual institution on a

B+ budget. We never have, and never will be, on the same playing field as the highly capitalized private US research universities. To think otherwise is a delusion.

The magnitude of many professorial salaries exceeds twenty times the median Canadian incomes. They are often justified in terms of competitiveness with the legal and academic marketplace. Indeed, many of our teachers have expensive and elite Ivy League degrees. Yet, how is the comparison justified if many of our professors have never practiced law? Or if some receive salaries in private practice alongside their teaching obligations?

Today, there are fewer jobs in traditional law, and the extant model is being disrupted and challenged by global forces. Not only does the market-based salary justification illustrate in microcosm the sort of social and economic privilege that has pervaded our profession’s history since its founding, it exemplifies a vast disjuncture between the academic world and its

epistocrats, and the growing legal labour market diseconomy that it has given effect to.

The stinging irony is that all of this arose at U of T because of a concern about international competitiveness. But it was not about the competitiveness of our legal economy or labour market. Rather, it was and is about the selfish prestige of law faculties and their professors. Our economy is undergoing a digital transformation, given life by social technologies and made possible by regulatory innovations such as the LSUC’s Alternative Business Structures (ABS). Our failure to address the dramatically rising cost of legal education will ensure, ironically, that our graduates will be at a huge disadvantage in this brave new legal world. The Canadian legal market will thus be undermined in this age of economic globalization.

We may live in “rapidly changing times,” but *plus ça change*. Instead of doing as we are told, I exhort my fellow law students to be advocates of our interests, and those of society at large. Law is a public good that suffers from a diseased mindset of competition and privilege.

Together, I am confident we can realign the legal academy with the avowed progressive and social science orientation that characterized Osgoode Hall’s younger academics during the “fiercest debate” in the 1940s.

I say down with tuition rates, or off with their heads! The revolution is nigh. Now, please excuse me while I get my pitchfork. ♦

Michael Motala is a second year JD student. Follow him on twitter.com/michaelmotala



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